

**FORM TO BE USED BY FEDERAL PRISONERS FOR FILING A PETITION FOR WRIT OF
HABEAS CORPUS UNDER TITLE 28 U.S.C. § 2241**

IN THE UNITED STATES DISTRICT COURT

FOR THE WORCHESTER DISTRICT COURT, FIRST CIRCUIT
HAROLD D. DONOHUE FEDERAL BUILDING, 595 MAIN STREET
WORCHESTER, MA 01608-2076

Barry Colby

Petitioner

03901-036 / Unit J-A

FMC, DEVEN, P.O. Box 879

AYER, MA 01432

(Full name under which you were convicted;
Prison Number; Full Mailing Address).

05-40124NG

VS.

CIVIL ACTION NO. CR-87-481

Geoffrey Rushlau, District Attorney

Respondent(s)

Lincoln County, Maine

32 High Street, P.O. Box 249

Wiscasset, Maine 04578

(Name of Warden or other authorized person
having custody of Petitioner).

Warden Winn

FMC, Devin, P.O. Box 880
Ayer, MA 01432

**PLEASE COMPLETE THE FOLLOWING. READ THE ENTIRE PETITION BEFORE FILLING IT
OUT. ANSWER THOSE QUESTIONS WHICH PERTAIN TO YOUR TYPE OF CLAIM.**

1. This petition concerns: (check appropriate blank)

☐ A conviction

☐ A sentence (CAUTION: If you are attacking a sentence imposed under a Federal Judgment, you
must file a direct motion under 28 U.S.C. § 2255 in the Federal Court which entered the
Judgment).

☐ Jail or prison conditions

☐ Prison discipline issue

☐ A parole problem

☐ Other. State briefly: An alledged probation violation

2. Place of detention: Federal Mediactal Center, Deven, Ayer, MA 01432

HAVE YOU FILED PREVIOUS PETITIONS FOR HABEAS CORPUS MOTION UNDER TITLE 28 U.S.C. § 2255, OR ANY APPLICATIONS, PETITIONS OR MOTIONS WITH RESPECT TO THIS CONVICTION?

 X Yes No

3. If your answer is "yes," give the following information:

a. Name of the Court: Lincoln County Superior Court

b. Nature of proceeding: Motion to dismiss

c. Grounds raised: (1) Violation of Petitioner's right to a speedy hearing

(2) Violation of 17-A, M.R.S.A. §§ 1205 (4) 1206 (3) that
provides that a hearing will be granted to an incarcerated individual
charged with a probation violation within 3 days of the arrest. (EX 1.)

d. Result: No Official action by the court / Letter from DA (EX 2)

e. Date of result:

f. Citation or number of any written opinion or order entered pursuant to each such disposition:

4. If you did not file a motion under section 2255 of Title 28 U.S.C., or if you filed a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

5. Does counsel presently represent you? Yes X No

If so, Name address and phone number of counsel:

6. Name and location of court, which imposed sentence: Lincoln County Superior Court

32 High Street, P.O. Box 249
Wiscasset, Maine 04578

CR 87-481

Aggravated Assault

12/22/88

X After a plea of guilty

A jury

Yes

3

NOTE: If you appealed more than once, attach an additional sheet of paper the same size, give all the information requested above in question number 13, a through e. DO NOT WRITE ON BACK OF PAGE.

14. Summarize briefly the facts supporting each ground. If necessary attach a single page behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

a. Ground one: Violated Petitioner's rights to a speedy hearing.

Supporting Facts: (Tell your story BRIEFLY without citing cases or law. You are CAUTIONED that you must state facts not conclusions, in support of your grounds. E.g., who did exactly what to violate your rights at what time or place).

Petitioner's probation was completed in May, 1996. Shortly before the probation was completed, the petitioner received a notice that he was in violation of his probation for failing to report to his probation officer. The petitioner attended a hearing and at the hearing, the probation officer asked for and received a 180 continuance.

At five subsequent hearing, the probation officer asked for and received 180 day continuances. the petitioner attended the first 5 hearing.

b. Ground Two:

Violated Petitioner's rights to a speedy hearing

Supporting Facts: The petitioner attended the first 5 hearing, all of which were continued for 180 days each at the request of the probation officer.

The 6th hearing was scheduled for May 1999, 3 years after the notice of the alleged violation. ~~The petitioner did not appear at the hearing. The probation officer requested a continuance. The hearing was continued for 180 days. The petitioner did not appear at the hearing of May 1999.~~ the petitioner was incarcerated at the Cumberland County Jail, Maine from January 2000 until May 2000. Despite several request

for a hearing as required under 17-A M.R.S.A. §§ 1205 (4) 1206 (3), there was Ground Three: no hearing granted.

~~Supporting Facts:~~ Petitioner was held at the Cumberland County Jail in Portland Maine from Jan 2000 to May 2000 on Federal Drug Charges and was not giving a probation violation hearing even though he was also being held for probation violation.

15. If this petition concerns jail or prison conditions, prison discipline, a parole problem or other cause under 28 U.S.C. § 2241, answer the following:

a. Did you present the facts in relation to your present complaint in the internal prison grievance procedure?

_____ Yes _____ ☒ No

(1) If your answer to "a" above is yes, what was the result? _____

(2) If your answer to "a" above is no, explain: ProcEDURE not applicable to complaint.

b. Did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

_____ Yes _____ ☒ No

(1) If your answer is "yes," state the date such claim was submitted and what action, if any has been taken:

(2) If your claim has not been acted on, attach copies of any correspondence you have received from the Bureau of Prisons or other federal agency concerning you.

c. **STATEMENT OF CLAIM:** State here as briefly as possible the facts of your case. DO NOT give any legal arguments or cite any cases or any statutes. Attach extra pages of the same size to this page if more room is necessary. DO NOT write on the reverse side of this page.

(a) That the six (6) continuances granted by the Lincoln County Superior Court at the request of the probation officer violated the petitioner's rights to a speedy hearing.

(b) That the failure of the Court to give me a hearing as provided in 17 A, M.R.S.A. §§ 1205 (4), 1206 (3) violated the petitioners rights

(c) That the violation of the petitioner's rights are preventing him from being considered for a half way house to serve the last segment of his Federal Sentence.

16. RELIEF: state briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

1. That the Court order that the ~~two~~ ~~two~~ charges pending against him in the Lincoln County Superior Court be dismissed.

2. That the outstanding warrant for the arrest of the petitioner be rescinded and cancelled.

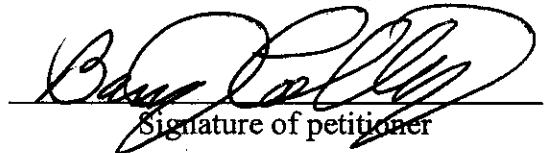
3. That the Bureau of Prison, subject to availability and his good conduct, grant the opportunity to the petitioner to serve a remaining portion of his Federal sentence in a half way house in Portland, Maine.

Signed on this the 28 day of July, 2005.


Signature of petitioner

I DECLARE (OR CERTIFY, VERIFY OR STATE) THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE OR INFORMATION AND BELIEF AND THAT ANY FALSE STATEMENTS MADE THEREIN ARE MADE SUBJECT TO THE PENALTIES OF APPLICABLE LAWS RELATING TO UNSWORN FALSIFICATIONS TO AUTHORITIES.

Executed on: 28 July, 2005.


Signature of petitioner

I hereby certify that on this the 28 day of July, 2005, I have sent copies of the attached Writ of Habeas Corpus by first class mail to the following:

Geoffrey Rushlau, Esq.
District Attorney
Lincoln County, Maine
32 High Street, P.O. Box 249
Wiscasset, Maine 04578

Warden Winn
Federal Medical Center, Devens
P.O. Box 880
Ayer, MA 01432

Submitted on this the 28 day of July 2005



STATE OF MAINE

SUPERIOR COURT

Lincoln, ss.

Docket No. RR-87-481

~~DISTRICT COURT~~

Location

Docket No.

STATE OF MAINE

v.

BARRY C. COLBY

218 Park Avenue

Portland Maine

D.O.B. 03/22/50

Defendant's Name, Address, County

WARRANT OF ARREST

- ☐ COMPLAINT, INDICTMENT
☐ FAILURE TO APPEAR FOR
☐ ARRAIGNMENT
☐ HEARING
☒ VIOLATION OF PROBATION
☐ UNPAID FINE/FEEs, ETC.

Height 5'8"

Weight 150

Eye Brown

Hair Lt Brown

Race White

Sex Male

Investigative Department Probation & Parole
Enforcement ID #

TO ANY AUTHORIZED LAW ENFORCEMENT OFFICER:
YOU ARE HEREBY COMMANDED: to arrest the defendant and

- ☐ bring the defendant without unnecessary delay before the above entitled court to answer to a charge of

Class _____, in violation of Title(s) _____, M.R.S.A.
 §§ _____

- ☒ commit the defendant to the county jail pending a preliminary hearing on an alleged violation of the conditions of probation as provided by 17-A, M.R.S.A. §§ 1205(4), 1206(3). (If not bailed, preliminary hearing shall be held not later than the third day after arrest, exclusive of weekends and holidays).

- ☐ bring the defendant before this court so that the defendant may show cause why a sentence of imprisonment should not be imposed for nonpayment. The defendant was ordered to pay the sum of \$ _____ for (fine and surcharges or assessments) (counsel fees) (restitution) (jail fees) to the clerk of courts and the defendant has defaulted in the payment of the obligation or in the payment of installments of the obligation.

Bail Commissioner to set bail (Except for Probation Revocation, Violation of Bail, Fugitive from Justice) unless fixed by court as follows:

☒ NO BAIL ALLOWED☐ \$ _____ cash☐ \$ _____ with _____ surety (ies) or \$ _____ unsecured cash☐ Personal Recognizance

Conditions of Bail:

Date: August 30, 1999

~~(Judge) (Clerk) (Justice of the Peace)~~

I arrested the defendant on _____ and now have the defendant before the court as commanded.

Date:

A TRUE COPY

Authorized Officer

CR-073, Rev. 11/96

ATTEST: _____
CLERK / JUDGE
LINCOLN COUNTY PROBATION DEPARTMENT

GEOFFREY A. RUSHLAU
DISTRICT ATTORNEY

LEANE M. ZAINEA
DEPUTY DISTRICT ATTORNEY

ERIC J. WALKER

PATRICIA A. MADOR

DONALD LAWSON-STOPPS

KENDRA L. POTZ

CHRISTOPHER R. FERNALD

CARRIE L. CARNEY

LISA R. BOGUE
ASSISTANT DISTRICT ATTORNEYS



STATE OF MAINE

OFFICE OF THE DISTRICT ATTORNEY
DISTRICT SIX
KNOX, WALDO, LINCOLN AND SAGADAHOC COUNTIES

PLEASE REPLY TO:

- ☐ **KNOX COUNTY COURTHOUSE**
62 Union Street
Rockland, ME 04841
Tel: 207-594-0424
Fax: 207-594-0434
- ☐ **WALDO COUNTY COURTHOUSE**
137 Church Street
Belfast, ME 04915
Tel: 207-338-2512
Fax: 207-338-6792
- ☐ **LINCOLN COUNTY COURTHOUSE**
32 High Street, P.O. Box 249
Wiscasset, ME 04578
Tel: 207-882-7312
Fax: 207-882-4323
- ☐ **SAGADAHOC COUNTY COURTHOUSE**
P.O. BOX 246
BATH, ME 04530
TEL: 207-443-8204
FAX: 207-443-8208

June 17, 2004

Sharon Simpson, Clerk
Lincoln County Superior Court
High Street
Wiscasset, Maine 04578

Re: State v. Colby; CR-87-481

Dear Sharon:

I reviewed Mr. Colby's letter and Motion dated January 19, 2004. My understanding of federal prison policy is that they will not return sentenced inmates to the states for hearing on probation violations. They only honor detainers on pending criminal charges. They will hold the federal inmate until his or her federal sentence is completed, and then honor the detainer. So we have no ability to bring him to Maine at this time. We can't do anything to eliminate further delay. Therefore, the two pending Motions to Revoke Probation, from 1996 and 1999, should not be dismissed even though they may have some impact on his current incarceration.

I know nothing about plea negotiations on his federal charges in 2000. There is nothing in our file to show we even knew of the federal case. Mr. Colby should have the attorney who represented him communicate with me if there was some discussion with state authorities for a global resolution.

Call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey Rushlau".

Geoffrey Rushlau
District Attorney

cc. Barry Colby

GEOFFREY A. RUSHLAU
DISTRICT ATTORNEY

LEANE M. ZATNEA
DEPUTY DISTRICT ATTORNEY

ERIC J. WALKER

PATRICIA A. MADOR

DONALD LAWSON-STOPPS

KENDRA L. POTZ

CHRISTOPHER R. FERNALD

CARRIE L. CARNEY

LISA R. BOGUE
ASSISTANT DISTRICT ATTORNEYS



STATE OF MAINE

OFFICE OF THE DISTRICT ATTORNEY
DISTRICT SIX
KNOX, WALDO, LINCOLN AND SAGADAHOC COUNTIES

PLEASE REPLY TO:

- ☐ KNOX COUNTY COURTHOUSE
62 Union Street
Rockland, ME 04841
Tel: 207-594-0424
Fax: 207-594-0434
- ☐ WALDO COUNTY COURTHOUSE
137 Church Street
Belfast, ME 04915
Tel: 207-338-2512
Fax: 207-338-6792
- ☒ LINCOLN COUNTY COURTHOUSE
32 High Street, P.O. Box 249
Wiscasset, ME 04578
Tel: 207-882-7312
Fax: 207-882-4323
- ☐ SAGADAHOC COUNTY COURTHOUSE
P.O. BOX 246
BATH, ME 04530
TEL: 207-443-8204
FAX: 207-443-8208

November 22, 2004

Federal Medical Center Devens
Attn: I.S.M. Records
P.O. Box 880
Ayer, Mass. 01432

Re: Inmate Barry Colby; Reg. # 03901-036

To Whom It May Concern:

A detainer was lodged against the above-named inmate in February, 2002. There is currently a probation violation proceeding in Lincoln County Superior Court docket number CR-87-481, with an outstanding warrant. I understand that the inmate's release date from federal custody is November 10, 2005, but that he could be released earlier to a halfway house in Portland, Maine. Please consider this letter as a withdrawal of the detainer request. The warrant will remain outstanding until he surrenders himself to our court. Bail will be addressed at that time. I ask that his release from your facility will be made contingent upon his making arrangements for his surrender promptly upon his return to Maine.

Do not hesitate to call if you have any questions about this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Geoffrey Rushlau".

Geoffrey Rushlau
District Attorney

cc. PPO Michael Roach
Sharon Simpson, Clerk of Courts